No. 77-1128

In the Supreme Court of the United States

OCTOBER TERM, 1977

THOMAS BIGGS GRIFFIN III and
ANTOINETTE LOUISE GRIFFIN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CITATIONS

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported. The opinion of the district court (Pet. App. A) is reported at 413 F.Supp. 178.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1977. A petition for rehearing was denied on December 12, 1977 (Pet. App. C). On

January 10, 1978, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including February 10, 1978 (Pet. App. D), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the warrantless search of a garment bag and of petitioners' automobile violated the Fourth Amendment.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner Antoinette Griffin was convicted on two counts of possession of heroin and cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2 (Pet. App. 25). Petitioner Thomas Griffin was convicted at the same trial on four counts of possession of heroin and cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2; of carrying a firearm during the commission of a felony, in violation of 18 U.S.C. 924(c)(2); and of possession of a firearm by a convicted felon, in violation of 18 U.S.C. App. 1202(a)(1).[1] Antoinette Griffin was sentenced to concurrent

[1] Thomas Griffin was acquitted on another count of possession of heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Co-defendant Linda Rue Jackson was acquitted on Counts 1 and 2, charging possession of heroin and cocaine, respectively, with intent to distribute, in violation of 21 U.S.C. 841(a)(1) (see Pet. 5).

terms of five years' imprisonment on each count. Thomas Griffin was sentenced to concurrent terms totaling ten years' imprisonment and three years' special parole on the possession charges and on the charge of violating Section 1202(a)(1), plus a consecutive term of two years' imprisonment on the charge of violating Section 924(c)(2). The court of appeals affirmed (Pet. App. B).

The evidence showed that on June 12, 1975, Antoinette Griffin entered a security checkpoint at the Detroit Metropolitan Airport with a gold garment bag and a gold tote bag (S.H. 29; Tr. 48-49, 87).[2] When an X-ray scan revealed a solid mass in the bottom of the tote bag, a security officer opened the bag and discovered a large sum of currency wrapped in a white towel (S.H. 29-30; Tr. 49-50, 53-58). The officer contacted Special Agent Paul Markonni of the Drug Enforcement Administration and described petitioner Antoinette Griffin and her luggage to him (S.H. 33, 59; Tr. 64, 87). Investigating further, Agent Markonni learned that the name on Antoinette Griffin's luggage was different from "M. Hood," the name in which her airline ticket had been purchased (S.H. 59-61; Tr. 89-90). After Antoinette Griffin boarded a flight to Los Angeles, Agent Markonni made arrangements for surveillance of her in California (S.H. 62; Tr. 93). Upon arrival there, she was observed being met by five known narcotics traffickers (S.H. 63).

[2] "S.H." refers to the transcript of the suppression hearing.

At approximately 12:30 a.m. on June 15, 1975, Agent Markonni was alerted by American Airlines that a "V. Hood" was scheduled to return to Detroit from Los Angeles early that morning (S.H. 69-70). Accordingly, Agent Markonni and two officers went to the airport, where they observed petitioner Thomas Griffin and co-defendant Linda Jackson in the gate area where the Los Angeles flight was to arrive (S.H. 71-73; Tr. 102-103). At about 3:10 a.m., petitioner Antoinette Griffin disembarked (S.H. 73; Tr. 103, 105). After briefly embracing Thomas Griffin, she entered a nearby restroom, as did Jackson (S.H. 74; Tr. 103-104).[3] Several minutes later, Antoinette Griffin rejoined Thomas Griffin, and together they went to another area of the terminal (S.H. 75, 81; Tr. 104-105).

Meanwhile, Jackson proceeded from the restroom to the baggage claim area (S.H. 81-83; Tr. 106-107). Agent Markonni observed among the luggage from the Los Angeles flight a gold garment carrier that appeared to be the same as the one taken to California by Antoinette Griffin; none of the other baggage was similar (S.H. 85; Tr. 107). The bag was retrieved and placed on a cart by a skycap who spoke with Jackson (S.H. 85-86; Tr. 107-108). Agent Markonni thereupon directed an officer to maintain surveillance of Jackson, while he and the other officer looked for petitioners, who, in the meantime,

[3] Although Jackson had been in the gate area when petitioner Antoinette Griffin's flight arrived, she did not meet any incoming passengers (S.H. 141-142).

had left the terminal (S.H. 86; Tr. 109). Agent Markonni apprehended petitioners in an automobile as they attempted to drive away (S.H. 87; Tr. 110-112), and he escorted them back into the terminal (S.H. 88; Tr. 112-113). Once inside, Agent Markonni approached Jackson, identified himself, and seized the clothing bag from the skycap's cart, which was approximately five feet away from Jackson (S.H. 89, 163; Tr. 113). The skycap stated that Jackson had given him the claim check for the bag (S.H. 166-169). Petitioners and Jackson were then taken into an office behind the baggage area, where Agent Markonni opened the garment bag and found substantial quantities of heroin and cocaine (S.H. 90-91; Tr. 114-116, 450-452). Shortly thereafter petitioners' automobile, which had been moved to the airport parking lot, was searched (S.H. 93; Tr. 248). Concealed underneath the front seat were a pistol and a wallet containing cocaine and heroin (S.H. 93; Tr. 180-181, 187, 249-250, 315-316, 461-463).[4] Heroin was also discovered in an unlocked suitcase on the rear seat of the vehicle (S.H. 93; Tr. 164, 336, 458-459).

ARGUMENT

Petitioners contend (Pet. 6) that there was no probable cause to arrest Linda Jackson or to be-

[4] The wallet also contained identification of Thomas Griffin (G. Exh. 11-A). Thomas Griffin was a convicted felon and not licensed to carry the firearm, which was manufactured outside the State of Michigan (G. Exhs. 13-15).

lieve that the automobile contained contraband (Pet. 9). They also contend that even assuming the existence of probable cause, the warrantless searches of the garment bag and of the automobile and its contents were invalid under *United States* v. *Chadwick*, 433 U.S. 1.

After a thorough review of the record, the district court concluded that Agent Markonni had probable cause to arrest Antoinette Griffin and Jackson and to believe that narcotics would be found in both the garment bag and the automobile[5] (S.H. 181-185; Pet. App. 15, 20), and the court of appeals affirmed (Pet. App. 25-26). There is no reason for further review by the Court.

1. The arresting agent knew that petitioner Antoinette Griffin, who was carrying a very large sum of money in her luggage, had made a short trip to Los Angeles, which he knew to be a principal point of distribution for illicit narcotics that had been coming into Detroit, and had been met in Los Angeles by known narcotics traffickers (S.H. 54). He knew that the name on petitioner's luggage did not match the name in which her ticket had been purchased. Immediately after she returned to Detroit she entered a restroom. Jackson, who had been at the gate when the flight arrived at about 3:00 a.m. but had

[5] The court found that while Agent Markonni initially lacked probable cause to arrest Thomas Griffin (S.H. 182), all the evidence admitted against him had been seized pursuant to the valid arrests of Antoinette Griffin and Jackson and the lawful search of the automobile (Pet. App. 20-24).

met no passengers, entered the restroom simultaneously. Jackson then proceeded to the baggage claim area, and Antoinette Griffin rejoined Thomas Griffin, with whom she left the area. At the claim area, Jackson had a conversation with a skycap, who then retrieved a gold garment bag—the only one of its kind among the luggage from the Los Angeles flight—that appeared to be the same as the one taken to Los Angeles by Antoinette Griffin. At approximately that time, petitioners left the terminal. As the district court described the situation (S.H. 181):

> It has all of the earmarks of a typical mule operation right then and there, no question about it.
>
> * * * * *
>
> On the overall picture [Agent Markonni] had every reason to believe and he had probable cause to believe that [petitioner Antoinette Griffin] left Detroit with a large sum of money to purchase narcotics, that she came back with the narcotics and there was a very, very subtle effort to pass her suitcase probably containing narcotics on to [Jackson] with whom she was working in concert and whom she had contact or at least the possibility of contact within the privacy of the ladies' room.

In these circumstances, Agent Markonni had exceptionally strong probable cause to believe that petitioner Antoinette Griffin had obtained narcotics in California and then made a delivery to Linda Jackson at the airport. This being so, it followed that illicit drugs would likely be found in the gold garment

bag, as well as in the automobile in which Antoinette Griffin had attempted to leave the airport. Agent Markonni thus had probable cause to arrest Jackson, and the search of the garment bag was properly made incident to that arrest. Additionally, the trial court properly determined that the subsequent warrantless search of the automobile was also constitutionally permissible, since the officers had probable cause to believe that it contained contraband.

2. Nothing decided in *United States* v. *Chadwick*, *supra*, requires a different result. In *Chadwick*, this Court held that federal law enforcement agents who had arrested several suspects, seized a locked footlocker, and transported it to the agents' offices, were constitutionally required to obtain a warrant before searching its contents. The Court concluded that once the agents had seized the locker, gained "exclusive dominion" over it, and arrested its owner, there was no exigency requiring an immediate search, nor was any other recognized exception to the warrant requirement applicable, and a warrantless search was therefore unreasonable (433 U.S. at 11-16).

a. *Chadwick* did not purport, however, to alter the settled Fourth Amendment rule permitting warrantless searches of the arrestee and of the area within his immediate control incident to a custodial arrest. See *United States* v. *Edwards*, 415 U.S. 800, 802-803; *United States* v. *Robinson*, 414 U.S. 218, 236; *Chimel* v. *California*, 395 U.S. 752, 763; *Abel* v. *United States*, 362 U.S. 217, 239; *Draper* v. *United States*, 358 U.S. 307, 314. On the contrary, the Court

observed in *Chadwick* that "[w]hen a custodial arrest is made, there is always some danger that the person arrested may seek to use a weapon, or that evidence may be concealed or destroyed" (433 U.S. at 14), and it recognized that "[t]he potential dangers lurking in all custodial arrests make warrantless searches of items within the 'immediate control' area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved" (*id.* at 14-15). Here the garment bag, which was not locked, was within the area of Jackson's immediate control; although the bag was on the skycap's cart, it was no more than five feet from Jackson and readily accessible to her (S.H. 161, 163). The bag was searched as soon as the officers escorted Jackson and petitioners to an office behind the baggage area, moments after Jackson was arrested. Accordingly, the search was properly conducted without a warrant as an incident to and essentially contemporaneous with Jackson's arrest. See *United States* v. *Lewis*, 556 F.2d 385, 388 (C.A. 6), certiorari denied, No. 77-431, January 9, 1978; *United States* v. *Gill*, 555 F.2d 597, 599 (C.A. 6); *United States* v. *Prince*, 548 F.2d 164, 165 (C.A. 6); *United States* v. *Giles*, 536 F.2d 136 (C.A. 6); *United States* v. *Cepulonis*, 530 F.2d 238, 242 (C.A. 1), certiorari denied, 426 U.S. 908; *United States* v. *Eatherton*, 519 F.2d 603, 610 (C.A. 1), certiorari denied, 423 U.S. 987; *United States* v. *Frick*, 490 F.2d 666, 669-670 (C.A. 5), certiorari denied *sub nom. Petersen* v. *United States*, 419 U.S. 831; *United*

States v. *Mehciz*, 437 F.2d 145, 146-148 (C.A. 9), certiorari denied, 402 U.S. 974.[6]

b. Nor is there anything in *Chadwick* that would invalidate the search of the automobile and its contents in this case. Indeed, *Chadwick* itself reaffirmed that this Court has long "recognized significant differences between motor vehicles and other property which permit warrantless searches of automobiles in circumstances in which warrantless searches would not be reasonable in other contexts." 433 U.S. at 12. Although this distinction "has been based in part on [an automobile's] inherent mobility, which often makes obtaining a judicial warrant impracticable," it has also been based upon "the diminished expectation of privacy which surrounds the automobile" (*ibid.*).

Unlike the instant case, *Chadwick* did not involve the automobile exception to the warrant requirement.[7] There the search of the double-locked footlocker was conducted at the offices of the Drug Enforcement Administration an hour and a half after the defendants had been arrested elsewhere for possession of

[6] Petitioners contend (Pet. 8) that the decision below conflicts with *United States* v. *Berry*, 560 F.2d 861 (C.A. 7), which held that the warrantless search of a briefcase carried by an arrestee was invalid under *Chadwick*. That decision, however, has been vacated as improvidently rendered (C.A. 7, No. 76-2014, decided January 31, 1978). The court on reconsideration affirmed the conviction, ruling that *Chadwick* would not be accorded retroactive effect.

[7] As the Court noted, the government did not contend that "the footlocker's brief contact with Chadwick's car makes this an automobile search * * *." 433 U.S. at 11.

contraband. At the time of the search, the footlocker was securely in the exclusive control of the law enforcement officers, and it was conceded that there was "no risk that whatever was contained in the footlocker trunk would be removed by the defendants or their associates." 433 U.S. at 4. Here, as the court of appeals noted (Pet. App. 27), the search of the petitioners' automobile and the unlocked suitcase on the rear seat "did not take place in the relative security of a federal building, as in *Chadwick*, but rather occurred outdoors on the premises of a busy metropolitan airport" approximately an hour after petitioners' arrest (Tr. 254-255, 283-288). Although the vehicle had been moved from the street to a parking lot and locked (Tr. 277-279, 283-285), the parking lot was accessible to the public (Tr. 255-256, 288-289). In these circumstances, it was reasonable for the officers to conduct a probable cause search without a warrant. *Chambers* v. *Maroney*, 399 U.S. 42, 48-52.

c. Even if *Chadwick* were deemed to alter prior law relating to searches incident to arrest and automobile searches, it should not be given retroactive application to searches occurring prior to the time it was decided. Three Circuits have already so held. See *United States* v. *Berry*, *supra*, slip. op. 2-3; *United States* v. *Reda*, 563 F.2d 510, 512 (C.A. 2), pending on a petition for a writ of certiorari, No. 77-5995; *United States* v. *Montgomery*, 558 F. 2d 311, 312 (C.A. 5), certiorari denied, No. 77-5205, October 31, 1977. These cases are wholly consistent

with the approach this Court has taken to the retroactivity of Fourth Amendment rulings generally. See, *e.g.*, *United States* v. *Peltier*, 422 U.S. 531; *Williams* v. *United States*, 401 U.S. 646, 653-655.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1978.

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